

Office of the Secretary of Labor

§ 10.26

connection with a covered contract no less than the applicable Executive Order minimum wage for all hours worked on or in connection with the covered contract, unless such worker is exempt under § 10.4 of this part. In determining whether a worker is performing within the scope of a covered contract, all workers who, on or after the date of award, are engaged in working on or in connection with the contract, either in performing the specific services called for by its terms or in performing other duties necessary to the performance of the contract, are thus subject to the Executive Order and this part unless a specific exemption is applicable. Nothing in the Executive Order or these regulations shall excuse noncompliance with any applicable Federal or State prevailing wage law or any applicable law or municipal ordinance establishing a minimum wage higher than the minimum wage established under Executive Order 13658.

(b) *Workers who receive fringe benefits.* The contractor may not discharge any part of its minimum wage obligation under the Executive Order by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Act, the cash equivalent thereof.

(c) *Tipped employees.* The contractor may satisfy the wage payment obligation to a tipped employee under the Executive Order through a combination of an hourly cash wage and a credit based on tips received by such employee pursuant to the provisions in § 10.28.

§ 10.23 Deductions.

The contractor may make deductions that reduce a worker's wages below the Executive Order minimum wage rate only if such deduction qualifies as a:

(a) Deduction required by Federal, State, or local law, such as Federal or State withholding of income taxes;

(b) Deduction for payments made to third parties pursuant to court order;

(c) Deduction directed by a voluntary assignment of the worker or his or her authorized representative; or

(d) Deduction for the reasonable cost or fair value, as determined by the Administrator, of furnishing such worker

with "board, lodging, or other facilities," as defined in 29 U.S.C. 203(m) and part 531 of this title.

§ 10.24 Overtime payments.

(a) *General.* The Fair Labor Standards Act and the Contract Work Hours and Safety Standards Act require overtime payment of not less than one and one-half times the regular rate of pay or basic rate of pay for all hours worked over 40 hours in a workweek to covered workers. The regular rate of pay under the Fair Labor Standards Act is generally determined by dividing the worker's total earnings in any workweek by the total number of hours actually worked by the worker in that workweek for which such compensation was paid.

(b) *Tipped employees.* When overtime is worked by tipped employees who are entitled to overtime pay under the Fair Labor Standards Act and/or the Contract Work Hours and Safety Standards Act, the employees' regular rate of pay includes both the cash wages paid by the employer (*see* §§ 10.22(a) and 10.28(a)(1)) and the amount of any tip credit taken (*see* § 10.28(a)(2)). (*See* part 778 of this title for a detailed discussion of overtime compensation under the Fair Labor Standards Act.) Any tips received by the employee in excess of the tip credit are not included in the regular rate.

§ 10.25 Frequency of pay.

Wage payments to workers shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under Executive Order 13658 may not be of any duration longer than semi-monthly.

§ 10.26 Records to be kept by contractors.

(a) The contractor and each subcontractor performing work subject to Executive Order 13658 shall make and maintain, for three years, records containing the information specified in paragraphs (a)(1) through (6) of this section for each worker and shall make them available for inspection and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor: